

House Bill 1178

By: Representatives Scott of the 2nd, Bearden of the 68th, and Butler of the 18th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for surgical or medical treatment, so as to provide for the nourishment or hydration of a person receiving health care; to amend Chapter 32 of Title 31 of the Official Code of Georgia Annotated, relating to advance directives for health care, so as to provide for definitions; to provide for a form; to provide that declarants shall be entitled to nourishment or hydration under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for surgical or medical treatment, is amended by adding a new Code section to read as follows:

"31-9-8.

(a) For the purposes of this Code section:

(1) 'Attending physician' means the physician who has primary responsibility at any time of reference for the treatment and care of a person.

(2) 'Health care' shall have the same meaning as provided for in Code Section 31-32-2.

(3) 'Nourishment or hydration' means any form of caloric energy or fluids that the human body may draw upon to promote its normal chemical balance and system function.

(b) Notwithstanding an advance directive for health care created pursuant to Chapter 32 of this title stating a person's wishes to the contrary, no person receiving health care shall be deprived of nourishment or hydration. Under no circumstances shall an attending physician deprive a person receiving health care of nourishment or hydration unless the attending physician determines that such deprivation is necessary as part of such person's medical treatment."

SECTION 2.

Chapter 32 of Title 31 of the Official Code of Georgia Annotated, relating to advance directives for health care, is amended by revising Code Section 31-32-2, relating to definitions, by adding a new paragraph and revising paragraph (12) as follows:

"(10.1) 'Nourishment or hydration' means any form of caloric energy or fluids that the human body may draw upon to promote its normal chemical balance and system function. It shall not mean life-sustaining procedure or health care."

"(12) 'Provision of nourishment or hydration' means the provision of nutrition or fluids by tube or other ~~medical~~ means."

SECTION 3.

Said chapter is further amended by revising Code Section 31-32-4, relating to the form of advance directive for health care, as follows:

"31-32-4.

'GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: _____ Date of Birth: _____
(Print Name) (Month/Day/Year)

This advance directive for health care has four parts:

PART ONE HEALTH CARE AGENT. *This part allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, body donation, and final disposition of your body. You should talk to your health care agent about this important role.*

PART ONE: HEALTH CARE AGENT

74
75 *[PART ONE will be effective even if PART TWO is not completed. A physician or health*
76 *care provider who is directly involved in your health care may not serve as your health care*
77 *agent. If you are married, a future divorce or annulment of your marriage will revoke the*
78 *selection of your current spouse as your health care agent. If you are not married, a future*
79 *marriage will revoke the selection of your health care agent unless the person you selected*
80 *as your health care agent is your new spouse.]*

81 **(1) HEALTH CARE AGENT**

82 I select the following person as my health care agent to make health care decisions for me:
83 Name: _____
84 Address: _____
85 Telephone Numbers: _____
86 (Home, Work, and Mobile)

87 **(2) BACK-UP HEALTH CARE AGENT**

88 *[This section is optional. PART ONE will be effective even if this section is left blank.]*

89 If my health care agent cannot be contacted in a reasonable time period and cannot be
90 located with reasonable efforts or for any reason my health care agent is unavailable or
91 unable or unwilling to act as my health care agent, then I select the following, each to act
92 successively in the order named, as my back-up health care agent(s):

93 Name: _____
94 Address: _____
95 Telephone Numbers: _____
96 (Home, Work, and Mobile)

97 Name: _____
98 Address: _____
99 Telephone Numbers: _____
100 (Home, Work, and Mobile)

(3) GENERAL POWERS OF HEALTH CARE AGENT

My health care agent will make health care decisions for me when I am unable to communicate my health care decisions or I choose to have my health care agent communicate my health care decisions.

My health care agent will have the same authority to make any health care decision that I could make. My health care agent's authority includes, for example, the power to:

- Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or other health care facility or service;
- Request, consent to, withhold, or withdraw any type of health care; and
- Contract for any health care facility or service for me, and to obligate me to pay for these services (and my health care agent will not be financially liable for any services or care contracted for me or on my behalf).

My health care agent will be my personal representative for all purposes of federal or state law related to privacy of medical records (including the Health Insurance Portability and Accountability Act of 1996) and will have the same access to my medical records that I have and can disclose the contents of my medical records to others for my ongoing health care.

My health care agent may accompany me in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and my health care agent may visit or consult with me in person while I am in a hospital, skilled nursing facility, hospice, or other health care facility or service if its protocol permits visitation.

My health care agent may present a copy of this advance directive for health care in lieu of the original and the copy will have the same meaning and effect as the original.

I understand that under Georgia law:

- My health care agent may refuse to act as my health care agent;
- A court can take away the powers of my health care agent if it finds that my health care agent is not acting properly; and
- My health care agent does not have the power to make health care decisions for me regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for mental or emotional illness, developmental disability, or addictive disease.

(4) GUIDANCE FOR HEALTH CARE AGENT

~~When making health care decisions for me, my health care agent should think about what action would be consistent with past conversations we have had, my treatment preferences as expressed in PART TWO (if I have filled out PART TWO), my religious and other beliefs and values, and how I have handled medical and other important issues in the past.~~
When making health care decisions for me, my health care agent should follow my treatment preferences as expressed in PART TWO. If I have not filled out PART TWO, my health care agent should consider the following factors while maintaining a presumption in favor of providing nourishment or hydration: what action would be consistent with past conversations we have had, my religious and other beliefs and values, and how I have handled medical and other important issues in the past. If what I would decide is still unclear, then my health care agent should make decisions for me that my health care agent believes are in my best interest, considering the benefits, burdens, and risks of my current circumstances and treatment options.

(5) POWERS OF HEALTH CARE AGENT AFTER DEATH**(A) AUTOPSY**

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) ORGAN DONATION AND DONATION OF BODY

My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Revised Uniform Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

[Initial each statement that you want to apply.]

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program.

_____ (Initials) My health care agent will not have the power to donate any of my organs.

160 (C) FINAL DISPOSITION OF BODY

161 My health care agent will have the power to make decisions about the final disposition of
162 my body unless I have initialed below.

163 _____ (Initials) I want the following person to make decisions about the final
164 disposition of my body:

165 Name: _____

166 Address: _____

167 Telephone Numbers: _____

168 (Home, Work, and Mobile)

169 I wish for my body to be:

170 _____ (Initials) Buried

171 OR

172 _____ (Initials) Cremated

173 PART TWO: TREATMENT PREFERENCES

174 *[PART TWO will be effective only if you are unable to communicate your treatment*
175 *preferences after reasonable and appropriate efforts have been made to communicate with*
176 *you about your treatment preferences. PART TWO will be effective even if PART ONE is not*
177 *completed. If you have not selected a health care agent in PART ONE, or if your health care*
178 *agent is not available, then PART TWO will provide your physician and other health care*
179 *providers with your treatment preferences. If you have selected a health care agent in PART*
180 *ONE, then your health care agent will have the authority to make all health care decisions*
181 *for you regarding matters covered by PART TWO. Your health care agent will be guided by*
182 *your treatment preferences and other factors described in Section (4) of PART ONE.]*

183 (6) CONDITIONS

184 PART TWO will be effective if I am in any of the following conditions:

185 *[Initial each condition in which you want PART TWO to be effective.]*

186 _____ (Initials) A terminal condition, which means I have an incurable or
187 irreversible condition that will result in my death in a relatively short period of time.

188 _____ (Initials) A state of permanent unconsciousness, which means I am in an
189 incurable or irreversible condition in which I am not aware of myself or my environment
190 and I show no behavioral response to my environment.

191 My condition will be determined in writing after personal examination by my attending
192 physician and a second physician in accordance with currently accepted medical standards.

193 **(7) TREATMENT PREFERENCES**

194 *[State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your*
195 *additional treatment preferences by initialing one or more of the statements following (C).*
196 *You may provide additional instructions about your treatment preferences in the next section.*
197 *You will be provided with comfort care, including pain relief, but you may also want to state*
198 *your specific preferences regarding pain relief in the next section.]*

199 If I am in any condition that I initialed in Section (6) above and I can no longer
200 communicate my treatment preferences after reasonable and appropriate efforts have been
201 made to communicate with me about my treatment preferences, then:

202 (A) _____ (Initials) Try to extend my life for as long as possible, using all
203 medications, machines, or other medical procedures that in reasonable medical judgment
204 could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to
205 receive nutrition or fluids by tube or other medical means.

206 OR

207 (B) _____ (Initials) Allow my natural death to occur. I do not want any
208 medications, machines, or other medical procedures that in reasonable medical judgment
209 could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by
210 tube or other medical means except as needed to provide pain medication.

211 OR

212 (C) _____ (Initials) I do not want any medications, machines, or other medical
213 procedures that in reasonable medical judgment could keep me alive but cannot cure me,
214 except as follows:

215 *[Initial each statement that you want to apply to option (C).]*

216 _____ (Initials) If I am unable to take nutrition by mouth, I want to receive
217 nutrition by tube or other medical means.

218 _____ (Initials) If I am unable to take fluids by mouth, I want to receive fluids
219 by tube or other medical means.
220 _____ (Initials) If I need assistance to breathe, I want to have a ventilator used.
221 _____ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary
222 resuscitation (CPR) used.

223 **(8) ADDITIONAL STATEMENTS**

224 *[This section is optional. PART TWO will be effective even if this section is left blank. This*
225 *section allows you to state additional treatment preferences, to provide additional guidance*
226 *to your health care agent (if you have selected a health care agent in PART ONE), or to*
227 *provide information about your personal and religious values about your medical treatment.*
228 *For example, you may want to state your treatment preferences regarding medications to*
229 *fight infection, surgery, amputation, blood transfusion, or kidney dialysis. Understanding*
230 *that you cannot foresee everything that could happen to you after you can no longer*
231 *communicate your treatment preferences, you may want to provide guidance to your health*
232 *care agent (if you have selected a health care agent in PART ONE) about following your*
233 *treatment preferences. You may want to state your specific preferences regarding pain*
234 *relief.]*

235 _____
236 _____
237 _____

238 **(9) IN CASE OF PREGNANCY**

239 *[PART TWO will be effective even if this section is left blank.]*

240 I understand that under Georgia law, PART TWO generally will have no force and effect
241 if I am pregnant unless the fetus is not viable and I indicate by initialing below that I want
242 PART TWO to be carried out.

243 _____ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE: GUARDIANSHIP

(10) GUARDIANSHIP

[PART THREE is optional. This advance directive for health care will be effective even if PART THREE is left blank. If you wish to nominate a person to be your guardian in the event a court decides that a guardian should be appointed, complete PART THREE. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. If you have selected a health care agent in PART ONE, you may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.]

[State your preference by initialing (A) or (B). Choose (A) only if you have also completed PART ONE.]

(A) _____ (Initials) I nominate the person serving as my health care agent under PART ONE to serve as my guardian.

OR

(B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

PART FOUR: EFFECTIVENESS AND SIGNATURES

This advance directive for health care will become effective only if I am unable or choose not to make or communicate my own health care decisions.

This form revokes any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE).

_____ (Initials) This advance directive for health care will become effective on or upon _____ and will terminate on or upon _____.

[You must sign and date or acknowledge signing and dating this form in the presence of two witnesses.

Both witnesses must be of sound mind and must be at least 18 years of age, but the witnesses do not have to be together or present with you when you sign this form.

A witness:

- Cannot be a person who was selected to be your health care agent or back-up health care agent in PART ONE;*
- Cannot be a person who will knowingly inherit anything from you or otherwise knowingly gain a financial benefit from your death; or*
- Cannot be a person who is directly involved in your health care.*

Only one of the witnesses may be an employee, agent, or medical staff member of the hospital, skilled nursing facility, hospice, or other health care facility in which you are receiving health care (but this witness cannot be directly involved in your health care).]

By signing below, I state that I am emotionally and mentally capable of making this advance directive for health care and that I understand its purpose and effect.

_____	_____
(Signature of Declarant)	(Date)

The declarant signed this form in my presence or acknowledged signing this form to me. Based upon my personal observation, the declarant appeared to be emotionally and mentally capable of making this advance directive for health care and signed this form willingly and voluntarily.

_____	_____
(Signature of First Witness)	(Date)

Print Name: _____

Address: _____

303 _____
 304 (Signature of Second Witness) (Date)
 305 Print Name: _____
 306 Address: _____

307 *[This form does not need to be notarized.]"*

308 **SECTION 4.**

309 Said chapter is further amended by revising subsections Code Section 31-32-7, relating to
 310 duties and responsibilities of health care agents, as follows:

311 "31-32-7.

312 (a) A health care agent shall not have the authority to make a particular health care
 313 decision different from or contrary to the declarant's decision, ~~if any, if~~ If the declarant is
 314 able to understand the general nature of the health care procedure being consented to or
 315 refused, as determined by the declarant's attending physician based on such physician's
 316 good faith judgment, then a health care agent should make the health care decision while
 317 maintaining a presumption that the declarant would choose the preservation of declarant's
 318 life. A health care agent may not choose to refuse or withdraw nourishment or hydration.

319 (b) A health care agent shall be under no duty to exercise granted powers or to assume
 320 control of or responsibility for the declarant's health care; provided, however, that when
 321 granted powers are exercised, the health care agent shall use due care to act for the benefit
 322 of the declarant in accordance with the terms of the advance directive for health care. A
 323 health care agent shall exercise granted powers in such manner as the health care agent
 324 deems consistent with the intentions and desires of the declarant. If a declarant's intentions
 325 and desires are unclear, the health care agent shall act in the declarant's best interest
 326 considering the benefits, burdens, and risks of the declarant's circumstances and treatment
 327 options. The health care agent shall maintain a presumption that the declarant would
 328 choose the preservation of life.

329 (c) A health care agent may act in person or through others reasonably employed by the
 330 health care agent for that purpose but may not delegate authority to make health care
 331 decisions.

332 (d) A health care agent may sign and deliver all instruments, negotiate and enter into all
 333 agreements, and do all other acts reasonably necessary to implement the exercise of the
 334 powers granted to the health care agent. A health care agent shall be authorized to
 335 accompany a declarant in an ambulance or air ambulance if in the opinion of the ambulance
 336 personnel protocol permits a passenger and to visit or consult in person with a declarant

who is admitted to a health care facility if the health care facility's protocol permits such visitation.

(e) The form of advance directive for health care contained in Code Section 31-32-4 shall, and any different form of advance directive for health care may, include the following powers, subject to any limitations appearing on the face of the form:

(1) The health care agent is authorized to consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment, or procedures relating to the physical or mental health of the declarant, including any medication program, surgical procedures, life-sustaining procedures, or provision of nourishment or hydration for the declarant, but not including psychosurgery, sterilization, or involuntary hospitalization or treatment covered by Title 37;

(2) The health care agent is authorized to admit the declarant to or discharge the declarant from any health care facility;

(3) The health care agent is authorized to contract for any health care facility or service in the name of and on behalf of the declarant and to bind the declarant to pay for all such services, and the health care agent shall not be personally liable for any services or care contracted for or on behalf of the declarant;

(4) At the declarant's expense and subject to reasonable rules of the health care provider to prevent disruption of the declarant's health care, the health care agent shall have the same right the declarant has to examine and copy and consent to disclosure of all the declarant's medical records that the health care agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, health care facility, or other health care provider, notwithstanding the provisions of any statute or other rule of law to the contrary; and

(5) Unless otherwise provided, the health care agent is authorized to direct that an autopsy of the declarant's body be made; to make an anatomical gift of any part or all of the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the 'Georgia Revised Uniform Anatomical Gift Act'; and to direct the final disposition of the declarant's body, including funeral arrangements, burial, or cremation.

(f) A court may remove a health care agent if it finds that the health care agent is not acting properly.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.